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STATE TAXATION OF THE PROCEEDS OF THE SALE OF IMPORTS. — The federal government has exclusive jurisdiction over interstate and foreign commerce whenever the national welfare requires uniformity of regulation.[1] And it is clear that the importation of goods from foreign countries and from one state to another is a subject of national importance. While a state may indirectly affect such importation in the exercise of its police power, as in the enacting of reasonable regulations for inspection and quarantine,[2] any direct restriction is invalid. The mere form of the regulation is immaterial — whether a direct tax upon the goods or a privilege tax.[3] It is the substance and not the form which constitutes the test.[4] The right of importation would, however, be valueless if as soon as the goods were within the state's jurisdiction they or the proceeds of their sale could be made subject to a discriminating tax in favor of domestic products.[5] The case which established this principle declared unconstitutional a statute which discriminated against importers of foreign goods by requiring them to take out a license for the privilege of sale. Curiously enough, this case, which merely denied the right of a state to tax imports as imports, was later relied on to establish the principle that foreign goods were entirely exempt from taxation until sold or used by the importer, or until taken from the original package and thus incorporated with the general mass of property in the state. This doctrine of the original package does more than protect foreign

[1] Cooley *v.* Board of Wardens, 12 How. (U. S.) 299.
[2] Morgan's S. S. Co. *v.* La. Board of Health, 118 U. S. 455.
[3] Welton *v.* Missouri, 91 U. S. 275.
[4] Postal Tel. & Cable Co. *v.* Adams, 155 U. S. 688, 698.
[5] Brown *v* Maryland, 12 Wheat. (U. S.) 419. Nor can a state discriminate against products of another state by exempting domestic products from taxation. Darnell *v.* Memphis, U. S. Sup. Ct., Jan. 20, 1908.

goods from discrimination. It denies to the state the right to tax these goods in common with domestic goods, and in fact results in discrimination in favor of foreign and against domestic products.

The unfortunate consequences of this mistaken theory have caused it to be limited. The meaning of the term "original package" has been restricted to the narrowest possible construction,[6] and the extension of the principle to goods brought from one state into another has been refused.[7] Moreover, the Supreme Court has recently upheld the constitutionality of a state tax upon the proceeds of the sale of goods imported in the original package, when those proceeds were retained in the state in the form of bank deposits and bills for collection and remitted to the foreign principal only after the import duties and the expenses of importation and sale had been paid therefrom. *People* v. *Wells*, Jan. 6, 1908. Apart from the nature of the goods, such a tax upon cash and notes as capital employed in a business within the state is undoubtedly valid.[8] And in this case, while the court admitted that the proceeds are not directly taxable,[9] it held that they obtained a situs in the state, since they were retained for purposes of the business, and were thereby mingled with other goods in the state, and that they accordingly became subject to taxation. Unless, therefore, such proceeds are in transit, their immunity from taxation ceases. It is interesting to note that a similar tax upon amounts receivable on bills given for sales of goods in the original package was held unconstitutional by a state court on the ground that it was a tax upon the proceeds of the sale, before the proceeds themselves had been realized.[10] The result of the present case, however, seems eminently sound. It is virtually a tax upon the business of importation. But there is no reason why such a business should not bear its proportionate share of the burden of taxation. Moreover the tax is in no way discriminatory against foreign commerce, and consequently is not a regulation of it.

EXTRA-TERRITORIAL EXTENT OF A STATE'S JURISDICTION IN PERSONAM. — Where a notice, a statutory substitute for a *subpœna duces tecum*, is served on a foreign corporation doing business within a state to produce certain corporation books formerly kept there, but at that time in another state, the very nature of jurisdiction seems to be involved. For the state, as sovereign, is in effect ordering the doing of an act in a foreign jurisdiction. The Supreme Court has recently decided, without discussion, however, that the state by its judicial officers is entirely competent to order this extra-territorial act and therefore can rightly punish disobedience as contempt. *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541. This case is not alone in its readiness to assume that a state, as sovereign, has such a right.[1] If it exists as a right, however, it must be as part of the

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[6] See 18 HARV. L. REV. 530.
[7] Woodruff *v.* Parham, 8 Wall. (U. S.) 123.
[8] New Orleans *v.* Stempel, 175 U. S. 309.
[9] Cook *v.* Pennsylvania, 97 U. S. 566
[10] Paul Gelpi & Bro. *v.* Treasurer, 48 La. Ann. 1535.

[1] State *v.* United Copper Co., 30 N. J. L. J. 309. Copies of Books or Entries: Erwin *v.* Oregon, etc., Co., 22 Hun (N. Y.) 566; Nat'l, etc., Co. *v.* Van Emden, 105 N. Y. Supp. 657. Partnership Books: Fleischmann *v.* Fleischmann, 31 N. Y. Misc. 216; Holly Mfg. Co. *v.* Venner, 86 Hun (N. Y.) 42. *Cf.* United States *v.* Tilden, 28 Fed. Cas. 174; Snow, etc., Co. *v.* Snow-Church Surety Co., 80 N. Y. Supp. 512.